

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 7281) DISMISSAL AND
6 Mackenzie for Congress and) CASE CLOSURE UNDER THE
7 Joel Jukus in his official capacity as treasurer,) ENFORCEMENT PRIORITY
8 Citizens for Ryan Mackenzie and) SYSTEM
9 Lisa Walter in her official capacity as treasurer,)
10 and Ryan E. Mackenzie)
11)
12)

13
14 **GENERAL COUNSEL'S REPORT**

15 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
16 basis to allocate its resources and decide which matters to pursue. These criteria include, without
17 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
18 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
19 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
20 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
21 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
22 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
23 discretion to dismiss cases under certain circumstances and where appropriate, to find no reason to
24 believe that a violation occurred.

25 The Office of General Counsel has scored MUR 7281 as a low-rated matter and has
26 determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the
27 reasons set forth below, we recommend that the Commission dismiss the allegations that Mackenzie
28 for Congress and Joel Jukus, in his official capacity as treasurer (the "Committee"), Citizens for

¹ The EPS rating information is as follows: Complaint Filed: December 4, 2017. Response Filed: January 10, 2018. An improper Complaint was submitted on October 2, 2017, which was missing referenced attachments. The attachments were submitted on December 4, 2017.

17-12442001

1 Ryan Mackenzie and Lisa Walter, in her official capacity as treasurer (the "State Committee"),² and
2 Ryan E. Mackenzie violated the Act or Commission regulations.

3 The Complaint alleges that the State Committee paid all expenses for an event on September
4 21, 2017,³ during which Mackenzie began his federal campaign (the "Campaign Event").⁴ The
5 Complaint asserts that the payments constitute in-kind soft money contributions from the State
6 Committee to Mackenzie's federal campaign, and the State Committee should register with the
7 Commission as a federal political committee.⁵ The Committee acknowledges that Mackenzie held
8 the Campaign Event in support of his federal candidacy, and some costs were originally paid by, or
9 invoiced to, the State Committee.⁶ Respondents explain that the event was originally planned in
10 August 2017 as a State Committee fundraiser, but in early September the incumbent U.S. House
11 member unexpectedly retired, and Mackenzie decided to run for that seat and use this already-
12 planned event to announce his federal candidacy.⁷ Respondents assert that the invoice for the
13 invitation was later reissued to the Committee, and the venue—at the Committee's request—
14 refunded the State Committee's payment after Mackenzie paid the costs himself.⁸ Respondents

² Mackenzie for Congress was established September 12, 2017, as Ryan Mackenzie's principal federal campaign committee. Mackenzie is and has been a member of the Pennsylvania House of Representatives since 2012. Citizens for Ryan Mackenzie was Mackenzie's principal state campaign committee, and filed Campaign Finance Reports with the Pennsylvania Department of State for the 2012, 2014, and 2016 election cycles.

³ The Complaint attaches materials from Mackenzie's state campaign, including a yard sign and two brochures, which were allegedly used in connection with the Campaign Event. Compl. Attachments (Dec. 4, 2017).

⁴ Compl. at 1. The Complaint attaches a copy of the invitation to the Campaign Event, as well as pictures from the event. Compl. Attach. at 1.

⁵ *Id.* at 1-2.

⁶ Resp. at 1-2 (Jan. 10, 2018).

⁷ *Id.* at 1.

⁸ The Committee appears to have reimbursed the candidate for this expense. Resp. at 2; October 2017 Quarterly Report at 41, <http://docquery.fec.gov/cgi-bin/forms/C00655175/1185458/>.

1 argue that under these circumstances, the Complaint should be dismissed because the error was
2 “inadvertent and innocent,” and Respondents took quick corrective action, including refunding all
3 non-federal funds.⁹ Respondents assert that the total amount involved is \$4,754.69.¹⁰

4 The Act prohibits federal candidates and entities directly or indirectly established, financed,
5 maintained, or controlled by or acting on behalf of those candidates from transferring, soliciting,
6 receiving, directing, or spending funds in connection with an election for federal office unless the
7 funds are subject to the limits, prohibitions, and reporting requirements of the Act.¹¹ Moreover,
8 Commission regulations prohibit the transfer of funds or assets from a candidate's non-federal
9 campaign committee to his or her federal campaign committee.¹²

10 Respondents concede that the State Committee was initially invoiced for the invitations to the
11 Campaign Event,¹³ and the State Committee paid for the venue. Regarding the allegations that the
12 State Committee paid for promotional materials at the Campaign Event, it is possible that some state
13 campaign materials were used or distributed at the Campaign Event, but it is likely their value was
14 minimal.¹⁴ Given the specific factual circumstances, the relatively modest amounts at issue, and

⁹ Resp. at 2.

¹⁰ *Id.*

¹¹ 52 U.S.C. § 30125(e)(1). Pennsylvania law contains no limit on the amount of an individual's contributions, contrary to the Act's provisions. See Penn. Dep't of State, Campaign Finance Reporting Law: Frequently Asked Questions at 2, available at <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Documents/Law-CF/law.pdf>.

¹² 11 C.F.R. § 110.3(d).

¹³ We have no information indicating whether the State Committee paid this invoice, and the Response is not clear—it refers to the invitations as one of the “payments made by the State House Committee” but later notes that the expense “was initially to be paid for by the State House Committee.” Resp. at 2.

¹⁴ The Commission has dismissed similar allegations concerning federal campaigns making incidental use of promotional materials prepared for a candidate's state campaign. See Factual & Legal Analysis at 6-7, MUR 6785 (Kwasman for Congress, *et al.*) (dismissing allegation that a federal campaign used state campaign assets where “the only apparent potential use of state campaign resources was the signs referring to Kwasman as a state representative, the value of which is likely minimal”); Factual & Legal Analysis at 9, MUR 6773 (Brian Nestande, *et al.*) (dismissing allegation

1 quick remedial actions taken by the Committee, we recommend that the Commission dismiss the
2 allegations consistent with the Commission's prosecutorial discretion to determine the proper
3 ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32
4 (1985). We also recommend that the Commission approve the attached Factual and Legal Analysis,
5 close the file as to all Respondents and send the appropriate letters.

6 **RECOMMENDATIONS**

- 7 1. Dismiss the allegations that Mackenzie for Congress and Joel Jukus in his official
8 capacity as treasurer, Citizens for Ryan Mackenzie and Lisa Walter in her official
9 capacity as treasurer, or Ryan E. Mackenzie violated the Act and Commission
10 regulations, pursuant to the Commission's prosecutorial discretion under *Heckler*
11 *v. Chaney*, 470 U.S. 821 (1985);
12
13 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
14
15 3. Close the file as to all Respondents.
16

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18 Lisa J. Stevenson
19 Acting General Counsel
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22 Kathleen M. Guith
23 Associate General Counsel
24

25
26
27 3.13.18
28 Date

29 BY: 
30 Stephen Gura
31 Deputy Associate General Counsel

32 
33 Jeff S. Jordan
34 Assistant General Counsel
35
36

that a federal campaign website displayed the candidate's state campaign mailer, which made no reference to the candidate's federal campaign because "the value of this transferred asset . . . would likely be *de minimis*").

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Amanda Andrade
Amanda L. Andrade
Attorney

Attachment:
Factual and Legal Analysis

18044440001

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Mackenzie for Congress and MUR 7281
6 Joel Jukus in his official capacity as treasurer,
7 Citizens for Ryan Mackenzie and
8 Lisa Walter in her official capacity as treasurer,
9 and Ryan E. Mackenzie
10

11 This matter was generated by a complaint filed with the Federal Election Commission.

12 The Complaint alleges that Citizens for Ryan Mackenzie and Lisa Walter, in her official capacity
13 as treasurer (the "State Committee") paid all expenses for an event on September 21, 2017,¹
14 during which Ryan E. Mackenzie began his federal campaign (the "Campaign Event").² The
15 Complaint asserts that the payments constitute in-kind soft money contributions from the State
16 Committee to Mackenzie's federal campaign, and the State Committee should register with the
17 Commission as a federal political committee.³ Mackenzie for Congress and Joel Jukus, in his
18 official capacity as treasurer (the "Committee") acknowledges that Mackenzie held the
19 Campaign Event in support of his federal candidacy, and some costs were originally paid by, or
20 invoiced to, the State Committee.⁴ Respondents explain that the event was originally planned in
21 August 2017 as a State Committee fundraiser, but in early September the incumbent U.S. House
22 member unexpectedly retired, and Mackenzie decided to run for that seat and use this already-

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⁴ Resp. at 1-2 (Jan. 10, 2018).

1 planned event to announce his federal candidacy.⁵ Respondents assert that the invoice for the
2 invitation was later reissued to the Committee, and the venue—at the Committee’s request—
3 refunded the State Committee’s payment after Mackenzie paid the costs himself.⁶ Respondents
4 argue that under these circumstances, the complaint should be dismissed because the error was
5 “inadvertent and innocent,” and Respondents took quick corrective action, including refunding
6 all non-federal funds.⁷ Respondents assert that the total amount involved is \$4,754.69.⁸ For the
7 reasons discussed below, the Commission exercises its prosecutorial discretion and dismisses
8 this matter pursuant to *Heckler v. Chaney*.⁹

9 The Act prohibits federal candidates and entities directly or indirectly established,
10 financed, maintained, or controlled by or acting on behalf of those candidates from transferring,
11 soliciting, receiving, directing, or spending funds in connection with an election for federal office
12 unless the funds are subject to the limits, prohibitions, and reporting requirements of the Act.¹⁰
13 Moreover, Commission regulations prohibit the transfer of funds or assets from a candidate’s
14 non-federal campaign committee to his or her federal campaign committee.¹¹

⁵ *Id.* at 1.

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⁹ 470 U.S. 821 (1985).

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5 their value was minimal.¹³ Given the specific factual circumstances, the relatively modest
6 amounts at issue, and quick remedial actions taken by the Committee, the Commission dismisses
7 the allegations consistent with the Commission’s prosecutorial discretion to determine the proper
8 ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32
9 (1985).

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